

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDIAN HARBOR INSURANCE
COMPANY,

Plaintiff,

vs.

THE CITY OF SAN DIEGO,

Defendant

Case No. 12-cv-5787 (JGK-KNF)
ECF Case

DECLARATION OF CLAUDIA CASTILLO DEL MURO

1. I am the Claims and Insurance Manager for the City of San Diego (the "City") and I submit this declaration in support of the City's Memorandum of Law in Opposition to Indian Harbor Insurance Company's Motion to Enjoin. The statements contained herein are based upon my personal knowledge and/or records regularly maintained in the course of the City's business. The statements contained herein are true and, if sworn as a witness, I could testify competently thereto.

2. The City of San Diego is a municipality organized and existing under the laws of the State of California. The City operates solely within the State of California and does not conduct business outside the State of California.

3. On or about July 31, 2009, Indian Harbor Insurance Company ("Indian Harbor") issued and delivered its "Pollution and Remediation Legal Liability Policy" to the California State Association of Counties CSAC-2, designated as policy no. PEC002076401, for the policy period from July 1, 2009 to July 1, 2012 (the "Policy"). A true copy of the Policy is attached hereto as Exhibit A. The City is an additional named insured under the Policy. The First Named Insured and each Additional Insured are located in California.

4. The Policy was negotiated in the State of California. Employees of the California State Association of Counties CSAC-2, as well as the employees of the insurance broker, Alliant Insurance Services, Inc., participated in the negotiation of the Policy. These employees are all located in the State of California.

5. The policy negotiations included in person meetings, telephone calls and numerous correspondences between the Alliant brokers and the Indian Harbor underwriter.

6. During the reporting period of the Policy, the City gave notice of and reported two lawsuits filed against the City in San Diego Superior Court and a third claim asserted against the City of San Diego (collectively, the "Underlying Actions"). The Underlying Actions involve damage to property located in California.

7. Indian Harbor filed the instant action on July 27, 2012, the same day that Indian Harbor denied coverage for the Underlying Actions.

8. On September 21, 2012, the City filed a lawsuit in the Superior Court of California for the County of San Diego against Indian Harbor for declaratory relief, breach of contract, breach of the implied covenant of good faith and fair dealing, and punitive damages. The California Action was removed to the Southern District of California on October 25, 2012.

9. The City anticipates that testimony will be needed for numerous witnesses located in the State of California. For example, City employees, including Jim Coldren and Janice Ellis would testify regarding the submission of notice of the Underlying Actions to Indian Harbor. All of whom reside and work in California.

10. Employees of the California State Association of Counties CSAC-2 including Michael Fleming, as well as current and past employees of Alliant Insurance Services, Inc.

including Shawn Kraatz and Kevin Bibler were responsible for, and would testify regarding, the negotiation and purchase of the Policy. All of whom reside and work in California.

11. Additional individuals, including Roger Bailey and Ann Sasaki, have knowledge of the Underlying Actions and calculation of the damages alleged therein. As any damages paid in the Underlying Actions would be part of the City's claim for indemnification, which is at issue in this lawsuit, these witnesses would be necessary to prove the City's claim. The Underlying Actions are pending in California, and these individuals reside and work in California.

12. The documents that the City anticipates will be produced in discovery and potentially used at trial are also located in California. Documents related to the negotiation and purchase of the Policy are in the possession of the City, the California State Association of Counties CSAC-2, and Alliant Insurance Services, Inc. within the State of California. Additionally, documents and proof concerning the value of the City's claim arise from the Underlying Actions which are pending in California. These documents are potentially voluminous, and their number is growing during the pendency of the Underlying Actions.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 9, 2012



Claudia Castillo Del Muro